

IN THE TENNESSEE REGULATORY AUTHORITY 1 53
NASHVILLE, TENNESSEE

IN RE: PETITION OF BELL SOUTH)
TO IMPLEMENT NEW AND) DOCKET NO. 00-00041
INCREASE EXISTING LATE)
PAYMENT CHARGES)

BRIEFED ISSUES

BellSouth has proposed to implement new and additional 3% late charge payments on all "subscriber's" for past due payments. It alleges that it will use the additional revenues to offset business "hunting charges."

The Consumer Advocate Division filed a Complaint or Petition to Intervene. In addition, the Consumer Advocate Division promulgated discovery to BellSouth, much of which went substantively unanswered. Subsequently, the Consumer Advocate Division filed a Motion to Compel, or alternatively, a Motion in Limine.

The hearing officer, instead of evaluating the complaint of the Consumer Advocate Division and making a determination of whether to compel, ordered the parties to prepare briefs on the ultimate issues in the case without benefit of discovery or even a determination whether there are any facts in dispute. The Consumer Advocate Division objected on the grounds that facts are necessary to provide context for the legal decision and that the hearing officer had not compelled discovery which would provide such facts.

The hearing officer has not entered an order regarding his directive. Since the hearing officer has not granted our Motion to Compel it is necessary to support this brief by affidavits

which show that there are either there are disputes of material fact or alternatively, that BellSouth's proposed late charges tariff is unlawful.

Questions Presented

- I. Does the late payment charge proposed in BellSouth's Tariff 00-00041 constitute an impermissible rate increase for basic local exchange service under Tenn. Code Ann. § 65-5-209?
 - A. Did the General Assembly, when it compelled incumbent local exchange companies applying for price regulation to add services to the basic local exchange service classification, change or diminish the relationship between the then existing service provided and the rates for those services provided?
 - B. Does Tenn. Code Ann. § 65-5-208 (a)(1)'s inclusion of all recurring and nonrecurring charges existing in rates, mean that all recurring and nonrecurring charges associated with basic local exchange service are covered, including but not limited to rates or charges associated with billing, collection and late payments for basic local exchange service?
 - C. Were the basic local exchange service rates in effect for BellSouth on June 6, 1995 based in part upon the consideration of recurring and nonrecurring expenses arising from billing, collection and late payments for those services?
- II. Were the provisions of Tenn. Code Ann. § 65-5-209 (f) enacted for the purpose of preserving the relationship between the rates for basic local exchange service and also the service provided at those rates?
- III. When BellSouth bills for service on behalf of other telecommunications companies does it have a right, independent of its agreement with the telecommunications companies for which it bills, to charge its proposed late payment charge to the consumer, in the event a consumer pays the bill late?
- IV. When a telecommunications service provider enters into a contract with a consumer and sells that contract to BellSouth or BellSouth purchases that contract, does BellSouth's purchase of the contract unilaterally create any relationship with the customer other than BellSouth's right to receive payments in

accordance with the contract?

- V. Does any action the Tennessee Public Service Commission may have taken with regard to costs associated with late payments during the 1993 rate case involving BellSouth (Earnings Investigation of South Central Bell telephone Company, 1993-1995, TPSC Docket 92-13527) have any bearing on the application of Tenn. Code Ann. § 65-5-209 to BellSouth's proposed late payment charge?
- A. The actions taken by the Tennessee Public Service Commission in Docket 92-13527 are res adjudicata on the issue whether the costs associated with late payments are recurring or nonrecurring charges which were considered in establishing rates.
- B. The actions taken by the Tennessee Public Service Commission in Docket 92-13527 are res adjudicata on the issue whether the recurring and nonrecurring costs associated with late payments are just reasonable and affordable, since BellSouth successfully prevented a hearing (earnings investigation) which could have changed the rates to reflect additional costs. Res adjudicata also applies to BellSouth because of its successful defense of this latter earnings investigation.

Analysis

The primary objective in interpreting statutes is to determine the legislative intent behind the statute. *State v. Smith*, 893 S.W.2d 908, 917 (Tenn. 1994), reh'g denied, (Tenn. 1995), cert. denied. 516 U.S. 829, 133 L. Ed. 2d 53, 116 S. Ct. 99 (1995). In doing so, the Court and the agency should look first to the statute itself and must rely, when possible, upon the ordinary meaning of the language and the terms used, refraining from any forced or subtle construction to limit or extend the statute's meaning. *Id.* And it is a general rule that the words of a statute, if of common use, are to be taken in their natural and ordinary sense, and without any forced or subtle construction to limit or extend their import. *Phillips & Buttorff Mfg. Co. v. Carson*, 188 Tenn. 132, 217 S.W.2d 1 (1948).

- I. Does the late payment charge proposed in BellSouth's Tariff 00-00041 constitute an impermissible rate increase for basic local exchange service under Tenn. Code Ann. § 65-5-209?

The late payment charge proposed by BellSouth in Tariff 00-00041 is an unlawful and impermissible rate increase by BellSouth since BellSouth is an incumbent local exchange company operating pursuant to Tenn. Code Ann. § 65-5-209.

- A. **The General Assembly, when it compelled incumbent local exchange companies applying for price regulation to add services to the basic local exchange service classification, did not change or diminish the relationship between the then existing services provided and the rates for those services?**

Consideration of the questions presented by BellSouth's tariff begin with the General Assembly's intended regulatory status for companies such as BellSouth and the requirements of that status. Next, there must be an examination of the matters, customers and end users affected by the tariff. Then the legality of the tariff itself must be ascertained by determining whether the effects of the tariff are consistent with the requirements of the regulatory status. As Tennessee consumers stated in its preface, some of the analysis must be predicated upon fact.

- 1. BellSouth is an incumbent local exchange company.**

There is no dispute of material fact that BellSouth's initial regulatory status is defined by Tenn. Code Ann. § 65-4-101. Subsection (d) of Tenn. Code Ann. § 65-4-101 provides:

(d) "Incumbent local exchange telephone company" means a public utility **offering and providing *basic local exchange telephone service as defined by § 65-5-208* pursuant to tariffs approved by the commission prior to June 6, 1995.**

(Emphasis added.). BellSouth is an incumbent local exchange telephone company.

- 2. Basic local exchange service for incumbent local exchange companies is defined by Tenn. Code Ann. § 65-5-208 (a) prior to and after June 6, 1995.**

Tenn. Code Ann. § 65-5-208 provides in pertinent part that:

Classification of services - Exempt services - Price floor - Maximum rates for non-basic services. (a) Services of incumbent local exchange telephone companies who apply for price regulation under § 65-5-209 are classified as follows:

(1) "Basic local exchange telephone services" are telecommunications services which are comprised of an access line, dial tone, touch-tone and usage provided to the premises for the provision of two-way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing **on** June 6, 1995, or other services required by state or federal statute. These services shall, at a minimum, be provided at the same level of quality as is being provided **on** June 6, 1995. Rates for these services shall include both recurring and nonrecurring charges.

It is important to note that Tenn. Code Ann. § 65-5-208 serves a dual purpose. First it defines basic local exchange telephone services prior to June 6, 1995. This purpose is achieved through Tenn. Code Ann. § 65-4-101 (d) which expressly provides that Tenn. Code Ann. § 65-5-208 defines tariffed basic local exchange telephone service for incumbent local exchange companies **prior to June 6, 1995**.

Next, Tenn. Code Ann. § 65-5-208 defines basic local exchange telephone services **on June 6, 1995**. Tenn. Code Ann. § 65-5-208 (a) provides that the definition of basic local exchange telephone services applies for incumbent local exchange companies applying for price regulation. Basic local exchange telephone services, therefore, are exactly the same **prior to and on June 6, 1995**. There is simply no basis for finding that basic local exchange telephone services is different prior to and on June 6, 1995 when Tenn. Code Ann. § 65-5-208 (a) (1) is construed *in pari materia* with Tenn. Code Ann. § 65-4-101 (d). Since the definition of basic local exchange telephone services prior to June 6, 1995 is exactly the same as basic local exchange telephone services on June 6, 1995, the General Assembly did not change the

relationship between basic local exchange telephone services rates.

3. Rates for basic local exchange service prior to and on June 6, 1995 include recurring and non recurring costs and charges.

It is clear that the rates for incumbent local exchange companies basic local exchange telephone services prior to and on June 6, 1995 include the same recurring and nonrecurring charges. As a result, the General Assembly did not change or diminish the relationship between the pre-June 6, 1995 basic local exchange service rates and the basic local exchange service rates on June 6, 1995.

B. Tenn. Code Ann. § 65-5-208 (a)(1)'s inclusion of all recurring and nonrecurring charges prior to and on June 6, 1995 in existing rates, means that all recurring and nonrecurring charges associated with basic local exchange service are covered, including but not limited to rates or charges associated with billing, collection and late payments for basic local exchange service.¹

Tenn. Code Ann. § 65-5-208 (a)(1) provides in pertinent part that: "Rates for these services **shall include** both recurring and nonrecurring charges." (Emphasis Added). "Shall" is a mandatory term.

Mr. Archie Hickerson, testifies in his affidavit that the rates for basic local exchange service were made in consideration of all recurring and nonrecurring costs and cost drivers prior to June 6, 1995 and continues in existing rates. These recurring and nonrecurring costs included costs and appropriate charges associated with billing and collecting late payments and any uncollectible accounts. Moreover, BellSouth is estopped from arguing that the recurring and non recurring charges included in basic local exchange service rates are not appropriate, or are

¹This analysis incorporates and also answers Consumer Advocate Division question 1. C.

unaffordable or unjust or unreasonable or alternatively *res adjudicata* applies because BellSouth successfully fought to prevent any more accurate ascertainment.

Under the doctrine of *res adjudicata*, judgment in a former action between the same parties on the same cause of action concludes not only facts actually litigated, but facts that might have been litigated. *Richardson v. Tennessee Board of Dentistry*, 913 S.W.2d 446, 459 (Tenn. 1995). To be applicable, it requires identity of cause of action, or person and parties to action, and of quality in persons for or against whom claim is made. *Richardson* at 459, citing *Black's Law Dictionary* 1172 (5th ed. 1979). Collateral estoppel operates to bar a second suit between the same parties and their privies on a different cause of action only as to issues which were actually litigated and determined in the former suit. *Richardson* at 459.

The Consumer Advocate Division was a party to the proceeding wherein BellSouth successfully opposed and argued against the institution of the proceeding for an earnings investigation which could have changed the recurring and nonrecurring charge and rate relationships before or on June 6, 1995. In addition, the Consumer Advocate Division was formerly part of the Tennessee Public Service Commission and can defend on the ground of *res adjudicata* and collateral estoppel.

The justness, reasonableness and affordability has been determined by the Tennessee Regulatory Authority when it approved BellSouth's price regulation plan. The company cannot now argue that the recurring and nonrecurring charges are inappropriate or unjust.

Since recurring and nonrecurring costs and charges were considered in basic local exchange service rate making prior to June 6, 1995. These recurring and nonrecurring charges from rates prior to June 6, 1995 did not change on June 6, 1995 and as a result are included in

current rates.

II. **The provisions of Tenn. Code Ann. § 65-5-209 (f) were enacted for the purpose of preserving the relationship between the rates for basic local exchange service and also the service provided at those rates.**

A. **Tenn. Code Ann. § 65-5-209 (f) was enacted to preserve the relationship between the rates for basic local exchange service and the service provided at those rates.**

BellSouth applied for price regulation on June 20, 1995. Tenn. Code Ann. § 65-5-209 (c)

provides that:

... With the implementation of a price regulation plan, **the rates existing on June 6, 1995**, for all basic local exchange telephone services and non-basic services, as defined in § 65-5-208, are deemed affordable. . . .

As a result all basic local exchange service rates existing on June 6, 1995 become the initial rates as a matter of law and are res adjudicata upon the implementation of a plan.

Tenn. Code Ann. § 65-5-209 (e) provides that a price regulation plan shall maintain rates by a maximum annual adjustment but notwithstanding the annual adjustments permitted in subsection (e), but subsection (f) provides in pertinent part:

Notwithstanding the annual adjustments permitted in subsection (e), *the initial basic local exchange telephone service rates of an incumbent local exchange telephone company subject to price regulation shall not increase for a period of four (4) years from the date the incumbent local exchange telephone company becomes subject to such regulation. At the expiration of the four-year period, an incumbent local exchange telephone company is permitted to adjust. . .*

It is clear from Tenn. Code Ann. § 65-5-208 (a)(1) that “rates” include recurring and nonrecurring charges. The provision that basic local exchange telephone service rates “shall not increase for a period of four years” has been referred to as a “freeze.” Therefore, the General Assembly intended to preserve the relationship between basic local exchange service rates and services through Tenn. Code Ann. § 65-5-209 (f).

In addition, Tenn. Code Ann. § 65-5-209 (h) provides in pertinent part:

.... Rates for call waiting service provided by an incumbent local exchange telephone company subject to price regulation shall not exceed, for a period of four (4) years from the date the company becomes subject to such regulation, the maximum rate in effect in the state for such service on June 6, 1995.

As a result, if BellSouth is charging the maximum rate for call waiting, those rates are subject to the “freeze.” If BellSouth is not charging the maximum rate it can increase its call waiting rate to the June 6, 1995 statewide maximum.

The date BellSouth became subject to price regulation is December 1, 1998.² The four year “freeze” means that it is unlawful for BellSouth to increase basic local exchange telephone service rates and call waiting service rates through at least November 30, 2002.

B. BellSouth’s Late Charges tariff is unlawful for basic local exchange service and call waiting service.

BellSouth’s proposed late charge tariff changes the A1. Definition of Terms to provide the definition that:

A late payment charge is a charge applied to a subscriber’s bill when the previous month’s bill has not been paid in full prior to the next billing date.

In addition, Section A2.4 Payment Arrangements and Credit Allowances provides:

A2.4.3 Payment for Service

* * *

C. A late payment charge of three percent (3.00%) of the unpaid balance will be applied to **each subscriber’s bill** (*including amounts billed in accordance with the Company’s Billing and Collections Services Tariff*) when the previous month’s bill has not been paid in full prior to the next billing date. Charges for payments that are overdue on state government accounts will be applied consistent

²By an Order dated December 9, 1998 in Tennessee Regulatory Authority docket 95-02614.

with the applicable state statutes.³

The proposed late charge tariff is under the category "Payment for service."⁴ Payment for service and rates are synonymous. As a result the late payment charge is unlawful for basic local exchange telephone services and call waiting.⁵

Furthermore, rates for basic local exchange telephone services include "recurring and nonrecurring" by operation of law.⁶ Therefore, there must be a determination whether a late payment charge is a rate or a recurring or nonrecurring charge.

As the proposed tariff shows the proposed late charge is a "payment for service." Prices or "rates" for BellSouth's basic local exchange telephone services service prior to and on June 6, 1995 considered the all recurring and nonrecurring expenses which could occur from the time a service order was initiated through the time revenues were accounted for or deemed uncollectible.⁷

BellSouth's late payment charge would affect three or perhaps four customer subclasses.⁸ First, the charge would be applied to basic local exchange telephone services subscribers and subscribers of call waiting. Second, the charge would be applied to non-basic service. Third, the

³The Company will begin applying the charges set forth in this section with normal billing cycles starting on April 1, 2000.

⁴A2.4.3.

⁵If it would cause the charge for call waiting to exceed the June 6, 1995 statewide maximum.

⁶Tenn. Code Ann. § 65-5-208 (a) (1).

⁷See, Affidavit of Archie Hickerson.

⁸Since the hearing officer has not compelled BellSouth to answer discovery we are not able to determine whether the company intends to charge 3 or 4 of the subclasses.

charge would be applied to “customers” under the billing and collections services tariff.⁹ Fourth, the charge could be applied to “end users” under the billing and collections services tariff, if “subscriber” in “A2.4.3 Payment for Service C,” means “end users.”

Tennessee consumers take the position that it is unlawful for BellSouth to apply and additional 3% late charge to basic local exchange telephone services. In addition, Tennessee consumers take the position that it is unlawful, extortionate, and anti-competitive for BellSouth to charge an “end user” under its billing and collections tariff an additional 3% charge.

III. When BellSouth bills for service on behalf of other telecommunications companies does it have a right, independent of its agreement with the telecommunications companies for which it bills, to charge its proposed late payment charge to the consumer, in the event a consumer pays the bill late?

A. When a telecommunications service provider enters into a contract with a consumer and sells that contract to BellSouth or BellSouth purchases that contract, no voluntary contractual relationship between BellSouth and the end user is created other than BellSouth’s right to receive payments in accordance with the customer’s contract?

BellSouth merely serves as a factoring agent or billing agent for its business customers under tariff A37. Therefore BellSouth has no authority to alter the payment terms between the customer and the end user.

As a part of its profit making operations, BellSouth has established a subsidiary which submits bills to BellSouth’s subscriber’s on behalf of other telecommunications companies or other entities. In such instances BellSouth does not have a contractual relationship with the end

⁹See, A37.1.1 A. “Customer” under the billing and collections services tariff means a telecommunications service provider or agent acting on behalf of a telecommunications service provider or in some cases a content provider. The Customer would appear to be the “subscriber” under the billing and collections tariff. However, the incomplete discovery leaves BellSouth’s position vague.

user for the telecommunications service provided by the other entity. For example, the other entity could be a reseller of BellSouth's services or a reseller of AT&T, Sprint, or Worldcom service.

The subscriber for this billing service should be the entity requesting BellSouth to bill for it. Tariff A37 refers to this entity as the "customer." The entity has a subscriber BellSouth calls the "end user." The "end user" generally is also a "subscriber" of BellSouth's basic local exchange telephone services.

The A37 services are normally contracted for directly between the "customer" and the end-user. The customer will then contract with BellSouth to bill the end-user. BellSouth remits the revenue collected to the customer.¹⁰

While the end user is a BellSouth subscriber, the end user has made no contractual agreement with BellSouth to provide the billing service. The customer and BellSouth independently contract to handle billing the end user.

This is a standard business practice called "factoring" that allows companies to avoid uneconomically duplicating billing services that are easily handled by others. The end user is merely a third party beneficiary to this agreement. Though the end user may benefit from the billing arrangement by having to pay one bill for all telecommunications services, the end user is not a party to the factoring contract. Unless stated otherwise in the contract between the "customer" and the "end user," the customer may reasonably direct the end user to remit all¹¹ payments to any address the customer chooses.

¹⁰The revenue is remitted minus certain charges and expenses which BellSouth deducts.

¹¹See *Restatement (Second) of Contracts* § 317, 324 (1979).

It is a basic and established principle of law that debtors may assert any rights and defenses they have against factors as they do against their original creditors.¹² Thus, the end user would have a defense against BellSouth and the customer because there is no privity of contract for these services between BellSouth and the end user. BellSouth is a factor of the Customer, empowered only to bill the end user and remit the funds back to the customer. BellSouth does not have the authority to modify the payment terms agreed to by the customer and the end user.

B. It is unjust and unreasonable to impose a late charge on the end user because BellSouth bears no risk of non-payment of the amount due the customer, is not obligated to serve as a traditional collection agent for unpaid debts, and incurs no additional expenses for non-payment of factoring amount.

BellSouth is compensated for their factoring services by the customer.¹³ BellSouth is not a traditional “del credere factor”; a business that purchases the right to receive another company’s accounts receivable and assumes the risk that those debts that are uncollectible. Instead, BellSouth is merely a billing service that passes the cost of uncollectible debts to the customer.

The Company (BellSouth) will issue a remittance check each month to each customer for which it provides bill processing service. The amount will be based upon the total revenue billed to the end users of the customer, less the Company’s rates and charges as specified in A37.1.6 following and **less any uncollectibles or adjustments.**

BellSouth GSST § A37.1.5 (A) (emphasis added). If this tariff were approved, even if the customer had some sort of contractual late payment service charge with the end user, BellSouth could impose an additional late charge penalty on top of and including the entire bill owed to the customer. Depending on the contractual arrangements, an end user could end up paying a late

¹²See *Restatement (Second) of Contracts* § 336 (2) (1979).

¹³See *BellSouth General Subscriber Services Tariff*, §§ A.37.1.5 and A.37.1.6

charge twice.

As a factoring service, BellSouth is not allowed to earn an additional profit from the end user on top of the compensation they receive from customers.¹⁴ This late fee would be an additional profit above and beyond the contractual agreement they have with the customers.

C. Late charges imposed on end users by BellSouth would be an unjust and unreasonable rate of compensation and therefore would be extortionate in violation of Tenn. Code Ann. § 65-4-122 (b).

Since BellSouth does not bear any risk or expense when end users pay late or do not pay their bill at all for a customer's charges, any late charge imposed by BellSouth would in effect give BellSouth something for nothing. This proposed late charge on the amount owed by an end user to a customer when BellSouth incurs no service cost falls within the statutory extortion prohibition in Tenn. Code Ann. § 65-4-122 (b).

D. Allowing BellSouth to charge late fees on end users is an anticompetitive exploitation of BellSouth's status as the dominant incumbent local service provider.

As shown supra, BellSouth bills for other entities including but not limited to resellers of BellSouth's services. If late payment charges are avoidable costs BellSouth should not be able to charge them to the reseller on top of its current late payment charges. If late payment charges were not stripped from the resale rate then BellSouth would be doubling or tripling its late payment charge in an anticompetitive manner.

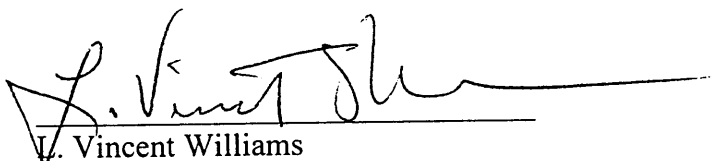
Tenn. Code Ann. § 65-5-208 (c) provides that the Tennessee Regulatory Authority shall enter orders prohibiting such anticompetitive conduct. In addition, the anticompetitive conduct is contrary to the Federal Telecommunications Act of 1996.

¹⁴35 C.J.S. *Factors* § 22

As the dominant incumbent carrier in Tennessee, BellSouth is in an excellent position to offer factoring services to other companies and grant them easy billing access to the large number of BellSouth subscribers. Allowing BellSouth to charge an additional premium directly on end users for non-basic telephone charges would give BellSouth an extraordinary revenue source either completely unavailable to competitive local exchange service companies or effectively unavailable on the scale that BellSouth is able to offer factoring services. Even if this late payment charge is somehow folded in to the price regulation caps already in place¹⁵, BellSouth could potentially use the proceeds from late payment charges to fund rate reductions in competitive markets and services and be able to offer a lower price to preferred customers that competitive local exchange service companies could not match.

For the forgoing reasons this agency should find that BellSouth's proposed late charges tariff is unlawful.

Respectfully submitted,



V. Vincent Williams
Deputy Attorney General - Consumer Advocate
Consumer Advocate Division
425 5th Avenue, North
Nashville, TN 37243
(615) 741-8723
BPR. No. 011189

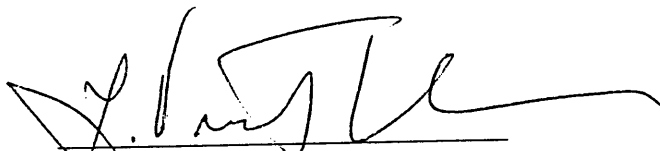
¹⁵BellSouth's current proposed tariff places the late payment charge outside the boundaries of the price regulation plan. Allowing a late charge beyond price regulation would not only give BellSouth the regulatory equivalent of a blank tariff with which to bill their customers at will, it would also exacerbate this anti-competitive advantage that the tariff would allow.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been faxed and mailed postage prepaid to the parties listed below this 30th day of May, 2000.

Guy Hicks, Esq.
Patrick Turner, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

David Waddell, Esq.
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505



L. Vincent Williams

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE: PETITION OF BELL SOUTH TO)
IMPLEMENT NEW AND INCREASE)
EXISTING LATE PAYMENT) DOCKET NO. 00-00041
CHARGES)
)
)

AFFIDAVIT

Comes the affiant, Archie Hickerson, Director -Consumer Advocate Division Staff , Office of the Attorney General and Reporter for the State of Tennessee, after being duly sworn and deposes and says:

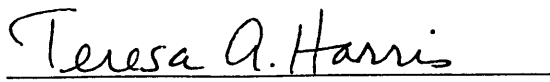
1. That I am a Certified Public Accountant licenced to practice in the State of Tennessee.
2. That I served 18 years with the Tennessee Public Service Commission and that my last position was Deputy Director-Accounting Division wherein I was responsible for regulatory matters involving all public utilities and supervised a staff of 16 persons.
3. That I have similar responsibilities with the Office of the Attorney General and Reporter.
4. That I am familiar with BellSouth's / South Central Bell's earnings investigation in Docket No. 92-13527.

5. That I am familiar with recurring and nonrecurring costs and cost drivers associated with BellSouth's rates prior to June 6, 1995.
6. That I am familiar with BellSouth's successful opposition to an earnings investigation which might have reset all recurring and nonrecurring rates (rates in effect on June 6, 1995) prior to the BellSouth beginning operations under price regulation.
7. That BellSouth's service rates which were in effect on June 6, 1995 were made with consideration of all recurring and nonrecurring cost drivers.
8. That BellSouth's billing and collections tariff A37 is a billing tariff only and that a billing agent such as BellSouth does not normally acquire any independent rights to assess charges on a consumer or end user.
9. That Tennessee consumers do not elect to make a voluntary contract with BellSouth which will permit late payments as consumers may do with respect to non-regulated billing agents.

Further the Affiant sayeth not.


Archie Hickerson

Subscribed and sworn before me this the 30th day of May 2000.


Notary Public

My commission expires on the 25th day of January, 2003.